

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

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|--|-----------------------------------|
| <b>WHITNEY NATIONAL BANK,</b>  | *                                 |
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|  | *                                 |
| <b>Plaintiff,</b>  | *                                 |
|  | *                                 |
|  | *                                 |
| <b>v.</b>  | * <b>CASE NO.: 2:07-cv-415-ID</b> |
|  | *                                 |
|  | *                                 |
| <b>HIGHWAY SOLUTIONS, LLC;<br/>MICHAEL C. MARCATO and<br/>ANNE S. MARCATO,</b> | *                                 |
|  | *                                 |
|  | *                                 |
|  | *                                 |
| <b>Defendants.</b>   | *                                 |

**RESPONSE OF HIGHWAY SOLUTIONS, LLC TO JULY 18, 2007 ORDER**

Defendant Highway Solutions, LLC (“Highway”) hereby responds to this Court’s July 18, 2007 Order by requesting that the automatic stay entered as to Co-Defendants Michael C. Marcato and Anne S. Marcato (collectively “the Marcatos”) be extended to encompass the claims asserted against Highway, and in support thereof, states as follows:

This action by Whitney National Bank (“Whitney”) against Highway and the Marcatos seeks primarily to collect on various loans to Highway which Whitney alleges are in default. [Complaint]. In addition to other relief, the Complaint also seeks to enforce personal guaranties on these loans executed by the Marcatos. [Doc. 1 ]. As alleged in the Complaint, the Marcatos each executed a personal guaranty in favor of Whitney National Bank on all current and future debts of Highway. [Complaint, ¶s 7 and 8].

On June 10, 2007, the Marcatos filed a voluntary Chapter 11 Petition in the United States Bankruptcy Court for the Middle District of Alabama (Case No. 07-30824) and subsequently filed a Notice of Stay with this Court. [Doc. 18]. On July 18, 2007, this Court entered an order inviting Whitney and Highway to submit to the Court a position on whether the automatic stay

entered in favor of the Marcatos should likewise extend to Highway. Highway hereby asserts that the automatic stay should extend to the claims asserted against it on the basis that the automatic stay applies not only to the debtors (the Marcatos), but also to Highway because it is wholly owned by Anne Marcato and the effect of the claims asserted against Highway in this case will have an immediate adverse economic impact on the Marcato's bankruptcy estate due to the fact that the Marcatos personally guaranteed the loans on which Whitney seeks relief.

As recognized by the Court in its July 18, 2007 Order, the Second Circuit Court of Appeals has held that the automatic stay extends to a non-debtor corporation in a similar circumstance. *Queenie, Ltd. v. Nygard Intern.*, 321 F.3d 282 (2<sup>nd</sup> Cir. 2003). In *Queenie*, a judgment was entered against a company and the individual who was the company's sole owner. The company's sole owner then filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code and the question was whether the automatic stay extended to the company or was limited solely to the individual debtor. The Court recognized that "[t]he automatic stay can apply to non-debtors, but normally does so only when a claim against the non-debtor will have an immediate adverse economic consequence for the debtor's estate." *Id.* at 287. As examples of instances where the automatic stay would extend to non-debtors, the Court identified circumstances where the non-debtor is a company wholly owned by the debtor or where the claim at issue seeks to establish an obligation of which the debtor is a guarantor. *Id.*

In the present case, both of these circumstances are present and the automatic stay should be extended to Highway. Highway is wholly owned by Anne Marcato. [Exhibit 1]. In addition, Whitney's claim seeks to establish Highway's obligations under various loans to which the Marcatos are alleged to be personal guarantors.

WHEREFORE, pursuant to Title 11 U.S.C. § 362 of the Bankruptcy Code, Defendant Highway Solutions, LLC respectfully requests that the instant cause be stayed as to it.

s/J. David Martin  
Robert D. Segall (ASB-7354-E68R)  
J. David Martin (ASB-7387-A54J)  
Copeland, Franco, Screws & Gill, P.A.  
444 South Perry Street (36104)  
Post Office Box 347  
Montgomery, Alabama 36101-0347  
Telephone: (334) 834-1180  
Facsimile: (334) 834-3172  
Email: [segall@copelandfranco.com](mailto:segall@copelandfranco.com)  
Email: [martin@copelandfranco.com](mailto:martin@copelandfranco.com)

**COUNSEL FOR DEFENDANTS,  
Highway Solutions, LLC  
Michael and Anne Marcato**

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 26<sup>th</sup> day of July, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

- **Gregory Carl Cook**  
gcook@balch.com cwicker@balch.com

s/J. David Martin  
Of Counsel

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FOR THE MIDDLE DISTRICT OF ALABAMA  
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**WHITNEY NATIONAL BANK,**

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**Plaintiff,**

v.

**CASE NO.: 2:07-cv-415-ID**

**HIGHWAY SOLUTIONS, LLC;  
MICHAEL C. MARCATO and  
ANNE S. MARCATO,**

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**Defendants.**

**STATE OF ALABAMA**

**COUNTY OF MONTGOMERY**

**Declaration of Anne S. Marcato Pursuant to 28 U.S.C. § 1746**

1. I am the Managing Member and sole owner of Highway Solutions, LLC ("Highway"), an Alabama Limited Liability Company.
2. I declare under penalty of perjury that the foregoing is true and correct. Executed on this the 25<sup>th</sup> day of July, 2007.

Anne S. Marcato  
Anne S. Marcato